

Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 EAE-00 AGR-10 EB-07 H-02 TRSE-00 STR-04

COME-00 L-03 ITC-01 SP-02 /039 W

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P 250934Z AUG 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 9407

UNCLAS SECTION 1 OF 2 MANILA 12933/1

PASS USDA/FAS/LEGE, LIVESTOCK & LIVESTOCK PRODS, FMD

E.O. 11652: NA

TAGS: BGEN, EPAP, RP

SUBJ: CONGRESSIONAL INTEREST: BRAHMAN CATTLE SALE CONTROVERSY

REF: STATE 205476

1. BACKGROUND. PRESIDENTIAL DECREE NO. 34 DATED 1972 AMENDING THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES STATES THAT DUTY FREE ENTRY OF ANIMALS FOR BREEDING PURPOSES SHALL BE RESTRICTED TO ANIMALS OF A RECOGNIZED BREED, DULY REGISTERED IN THE BOOK OF RECORD ESTABLISHED FOR THAT BREED, CERTIFIED AS SUCH BY THE BUREAU OF ANIMAL INDUSTRY; PROVIDED, FURTHERMORE, THAT CERTIFICATE OF SUCH RECORD, AND PEDIGREE OF SUCH ANIMAL DULY AUTHENTICATED BY THE PROPER CUSTODIAN

OF SUCH BOOK OF RECORD, SHALL BE PRODUCED AND SUBMITTED TO THE COLLECTOR OF CUSTOMS, TOGETHER WITH AFFIDAVIT OF THE OWNER OR IMPORTER, THAT SUCH ANIMAL IS THE ANIMAL DESCRIBED IN SAID CERTIFICATE OF RECORD AND PEDIGREE: AND PROVIDED, FINALLY, THAT THE ANIMALS ARE CERTIFIED BY THE NATIONAL ECONOMIC DEVELOPMENT AUTHORITY AS NECESSARY FOR ECONOMIC DEVELOPMENT.

2. A MEMORANDUM DATED JUNE 26, 1974, FROM GERARDO SICAT, DIRECTOR-GENERAL OF NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY, RESTATED THE SAME REQUIREMENTS FOR DUTY FREE ENTRY OF BREEDING LIVESTOCK. MEMO SENT TO DEPARTMENT OF FINANCE, BUREAU OF ANIMAL INDUSTRY AND PRESIDENTIAL EXECUTIVE ASSISTANT ON AUGUST 2, 1974.

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3. FOLLOWING IS THE DECISION OF THE ACTING COMMISSIONER OF CUSTOMS, DATED APRIL 28, 1976, REGARDING THE SUBJECT CATTLE. QUOTE. THIS IS AN APPEAL FROM THE DECLARATION OF ABANDONMENT ISSUED BY THE COLLECTOR OF CUSTOMS OF MACTAN DATED OCTOBER 3, 1975.

AS BORNE OUT IN THE RECORDS, THE IMPORTER/CONSIGNEE IMPORTED INTO THIS COUNTRY THROUGH MACTAN INTERNATIONAL AIRPORT, 126 HEADS OF BEEF CATTLE FOR BREEDING (BRAHMAN BULLS AND HEIFERS) FROM SAN FRANCISCO, CALIFORNIA, U.S.A. COVERED BY AIRWAY BILL OF LADING NO. 023-12438591, EX PLAYING TIGER LINE AIRCRAFT BEARING FLIGHT NO. 049.28. THE SUBJECT IMPORTATION HAS BEEN ISSUED FREE PRATIQUE DATED JULY 29, 1974. WITH THE PERMISSION OF THE COLLECTOR OF CUSTOMS OF MACTAN, THE CATTLE WERE DISCHARGED FROM THE AIRPLANE AND WERE TRANSFERRED TO CAGAYAN DE ORO CITY UNDER CUSTOMS GUARD. THEREAFTER, IN A RADIO MESSAGE DATED NOVEMBER 14, 1974, THEN COMMISSIONER GEOTINA ALLOWED MADJAPAHIT CATTLE CORPORATION TO WITHDRAW UNDER BOND EQUIVALENT TO ONE AND ONE-HALF TIMES THE ESTIMATED DUTIES, TAXES AND OTHER CHARGES ON THE SUBJECT CATTLE, CONDITION FOR THE PRESENTATION WITHIN THREE (3) MONTHS OF CORRESPONDING TAX EXEMPTION PAPERS FROM THE OFFICE OF THE PRESIDENT, OTHERWISE TO COLLECT DUTIES AND TAXES DUE THEREON. SINCE NO BOND WAS PRESENTED, NOR IMPORT ENTRY WAS FILED, ABANDONMENT PROCEEDINGS NO. 5-75 WAS INSTITUTED AND THE DECLARATION OF ABANDONMENT WAS SUBSEQUENTLY ISSUED ON OCTOBER 5, 1975.

AT THIS JUNCTURE, MADJAPAHIT CATTLE CORPORATION, THROUGH COUNSEL NOW CONTENDS THAT IT WAS NOT NOTIFIED THAT ABANDONMENT PROCEEDINGS HAD BEEN INSTITUTED, MUCHLESS, WAS IT GIVEN THE OPPORTUNITY TO PRESENT ITS CASE IN A FORMAL INQUIRY IN VIOLATION OF DUE PROCESS AND SECTION 1801 OF THE TARIFF AND CUSTOMS CODE. SUCH POSTURE IS BELIED BY THE RECORDS. IT IS REFLECTED IN THE RECORDS THAT THE IMPORTER/CONSIGNEE, MADJAPAHIT CATTLE CORPORATION OF 2016 ROXAS BOULEVARD, PASAY CITY, IN ITS WIRE TO THE OFFICE OF THE COLLECTOR DATED JANUARY 24, 1975, IN ANSWER TO THE WIRE DATED JANUARY 16, 1975, REQUESTED TO HOLD IN ABEYANCE FURTHER ACTION ON SAID SHIPMENT IN VIEW OF AN ALLEGED NEW DEVELOPMENT ON THEIR PETITION FOR TAX EXEMPTION PENDING APPROVAL BY THE OFFICE OF THE PRESIDENT.

INDEED, THE GROUND RELIED UPON BY THE IMPORTER/CONSIGNEE IN PRAYING FOR THE DEFERMENT OF THE ABANDONMENT PROCEEDINGS ON THE SUBJECT UNCLASSIFIED

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IMPORTATION, WHICH IS CONTINGENT UPON THE MERIT OR DEMERITS OF THEIR PETITION FOR TAX EXEMPTION, DOES NOT CONSTITUTE A REASONABLE AND VALID GROUND TO FURTHER EXTEND THE TIME LIMIT WITHIN WHICH THE IMPORTER SHOULD FILE THE CORRESPONDING IMPORT ENTRY AND WITHDRAW SAID IMPORTATION FROM CUSTOMS CUSTODY. THERE WAS SUFFICIENT NOTICE GIVEN TO THE IMPORTER/CONSIGNEE TO WARRANT THE INSTITUTION OF ABANDONMENT PROCEEDINGS AND THE SUBSEQUENT DECLARATION OF ABANDONMENT OF THE IMPORTATION IN QUESTION IN ACCORDANCE WITH LAW.

IN VIEW OF THE FOREGOING, THIS OFFICE HOLDS THAT DECLARATION OF ABANDONMENT, DATED OCTOBER 8, 1975, ON THE CATTLE IN QUESTION, SUBJECT OF ABANDONMENT PROCEEDINGS NO. 5-75, VALID AND IN ACCORDANCE WITH SECTION 1801 OF THE TARIFF AND CUSTOMS CODE, AS AMENDED BY PRESIDENTIAL DECREE NO. 34. END OF QUOTE.

4. THE AGATTACHE HAS PIECED TOGETHER THE FOLLOWING SEQUENCE OF EVENTS:

A. FINANCING - PRESIDENT RASCID LUCMAN OF THE MADJAPAHIT CATTLE CORPORATION SUBMITTED PROPOSAL FOR LOAN TO DBP WHICH WAS TURNED DOWN BECAUSE IT DID NOT MEET THE REQUIREMENTS OF DBP NOR SUPPORT THE LOAN REQUEST OF P7 MILLION. TECHNICIANS OF THE LIVESTOCK AND POULTRY SECTION OF DBP, WORKING WITH FORMER PEACE CORPS GARY HAWES, CONSULTANT TO MADJAPAHIT CATTLE CORPORATION, REVISED THE FEASIBILITY STUDY. THE NEW PROPOSAL CALLED FOR THE CORPORATION TO PUT UP 50 PERCENT EQUITY, OR P3.5 MILLION, AND DBP WOULD GRANT A LOAN OF EQUAL AMOUNT. THE REVISED PROPOSAL WAS PRESENTED TO CHAIRMAN VIRATA OF DBP, NOW DECEASED, AND TO VICE PRES. QUIRINO OF THE CORPORATION. ACCORDING TO TECHNICIANS THE CORPORATION NEVER FOLLOWED UP TO SECURE LOAN. OTHERS HAVE INDICATED THAT LUCMAN DID HAVE SEVERAL TALKS WITH VIRATA BUT DETAILS ARE NOT KNOWN TO OTHERS IN DBP.

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ACTION EA-09

INFO OCT-01 ISO-00 EAE-00 AGR-10 EB-07 H-02 TRSE-00 STR-04

COME-00 L-03 ITC-01 SP-02 /039 W

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P 250934Z AUG 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 9408

UNCLAS SECTION 2 OF 2 MANILA 12933/2

PASS USDA/FAS/LEGE, LIVESTOCK & LIVESTOCK PRODS, FMD

B. BUREAU OF ANIMAL INDUSTRY (BAI) FILES SHOW FOLLOWING SEQUENCE:

1. THE CORPORATION SENT LETTER TO BAI INFORMING BUREAU OF DESIRE TO IMPORT BREEDING CATTLE;

2. BAI DIRECTOR REFUERZO, WHO WAS RELIEVED OF DUTY IN LATE 1975, ISSUED FORMAL PERMIT TO IMPORT;

3. BAI APPROVAL NOTICE SENT TO SECRETARY OF AGRICULTURE;

4. LANDING PERMIT OBTAINED;

5. CUSTOMS NOTIFIED OF LANDING BY BAI;

6. INSPECTED BY BAI OFFICIALS WHO DETERMINED CATTLE DID NOT MEET SPECIFICATIONS FOR DUTY FREE ENTRY AS FREEDING CATTLE. NOWHERE IN BAI RECORDS IS THERE A REFERENCE THAT THE CATTLE WERE REGISTERED BY ABBA AS REQUIRED BY P.D. NO. 34. THE CATTLE LEFT SAN FRANCISCO ABOUT JULY 13, 1974.

C. BUREAU OF CUSTOMS PROVIDED THE FOLLOWING:

1. ON JULY 29, 1974 THE CORPORATION IMPORTED, THROUGH MACTAN AIRPORT, CEBU, 126 HEAD OF BREEDING CATTLE, BRAHMAN BULLS AND HEIFERS;

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2. JANUARY 16, 1975, COLLECTOR OF CUSTOMS, MACTAN, GAVE CORPORATION 10 DAYS TO FILE WITH THE BUREAU OF CUSTOMS THE IMPORT ENTRY;

3. ON JANUARY 24, THE CORPORATION IN A WIRE TO COLLECTOR OF CUSTOMS, MACTAN, REQUESTED TO HOLD IN ABEYANCE FURTHER ACTION IN VIEW OF NEW DEVELOPMENTS ON PETITION FOR TAX EXEMPTION PENDING APPROVAL BY OFFICE OF PRESIDENT.

4. COLLECTOR OF CUSTOMS RULED THAT GROUNDS RELIED UPON BY CORPORATION FOR DEFERMENT OF ABANDONMENT PROCEEDINGS, WHICH WAS CONTINGENT ON THREE (3) ABOVE, DOES NOT CONSTITUTE A REASONABLE VALID REASON TO FURTHER EXTEND TIME LIMIT WITHIN WHICH THE CORPORATION SHOULD FILE THE IMPORT ENTRY;

5. ON OCTOBER 3, 1975, THE COLLECTOR OF CUSTOMS ORDERED AND DECREED THE SUBJECT CATTLE AND OFFSPRING, IF ANY, IN FAVOR OF THE GOVERNMENT AS PROVIDED FOR BY LAW.

6. ON MARCH 7, 1976, CORPORATION REQUESTED THAT REMAINING 96 HEAD OF CATTLE BE TRANSFERRED FROM CAGAYAN DE ORO CITY TO MARAWI CITY. REQUEST DENIED BY COLLECTOR OF CUSTOMS IN LETTER OF MARCH 8, 1976;

7. DECISION OF THE COMMISSIONER OF CUSTOMS, SEE
PARA 2, HELD DECLARATION OF ABANDONMENT PROCEEDINGS NO.
5-75 AND 6-75 VALID;

8. ON AUGUST 17, 1976 FOLLOWING TELEGRAM SENT TO
J.B. QUIRINO: QUOTE. DECLARATION OF ABANDONMENT PROCEEDINGS
NO. 5-75 VALID PER DECISION DATED APRIL 29, 1976 COPY OF
WHICH RECEIVED BY COUNSEL 10 MAY 1976 . DECISION HAD
BECOME FINAL AND EXECUTORY, DISPOSITION OF SUBJECT
CATTLE SHALL BE BY AUCTION SALE AS SET BY MACTAN COLLECTOR.
ACCORDINGLY FILING OF ENTRY NOT ALLOWED. END OF QUOTE.

5. COMMENTS. AGATTACHE HAS TALKED WITH QUIRINO, WHO IN CEBU,
3 TIMES LAST WEEK. QUIRINO SAID HE WOULD BE IN MANILA AUGUST
25. HE HAS NOT YET CONTACTED ATTACHE OFFICE. THUS, WE DO NOT
KNOW HIS STORY. HOWEVER, QUIRINO SHOULD HAVE BEEN AWARE OF
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REQUIREMENT FOR DUTY FREE ENTRY AND SO INFORMED MICHELSON. WITH
VIRATA'S PASSING, THERE IS NO WAY TO DETERMINE IF LUCMAN TALKED
WITH VIRATA AFTER PROPOSAL REVISED, BUT WE ASSUME HE DID. IF
VIRATA TURNED DOWN THE REQUEST OR NOT, AND FOR WHAT REASON, IS
NOW ONLY KNOWN BY LUCMAN OR PERHAPS QUIRINO. AS FAR AS WE CAN
DETERMINE, CATTLE HAVE NOT YET BEEN SOLD. REGARDING THE
CLEARANCE OF HOGS, THIS ISSUE RAISED WITH AGATTACHE BY TARLOW
OF MICHELSON, BUREAU OF CUSTOMS ACKNOWLEDGE THAT THEY HAD BEEN
CLEARED.

6. WE ARE STILL LOOKING INTO MATTER AND WILL REPORT FURTHER.
SITUATION IS COMPLICATED BY FACTS THAT DISTANCE HAS PREVENTED
ON THE SPOT INVESTIGATION AND THAT, WHILE AGATT HAS BEEN ABLE TO
TALK TO QUIRINO BY TELEPHONE, QUIRINO HAS FAILED TO APPEAR IN
PERSON. SINCE WE ARE NOT SATISFIED THAT WE POSSESS ALL RELEVANT
FACTS, WE HAVE BEEN UNABLE TO DO MORE THAN TO SUGGEST TO COMMISSIONER
OF CUSTOMS THAT HE POSTPONE SALE. COMMISSIONER HAS RESPONDED
THAT SINCE CASE HAS DRAGGED ON FOR MORE THAN TWO YEARS, HE PERCEIVES
NO REASON FOR NOT GOING AHEAD WITH DISPOSAL. (AS FAR AS WE KNOW,
CATTLE HAVE NOT YET BEEN SOLD. HOWEVER, SHOULD BE NOTED THAT IT
APPEARS TO US THAT TITLE TO CATTLE HAS ALREADY PASSED TO GOP.)
EMBASSY WOULD HAVE PREFERRED TO HAVE BEEN IN POSITION TO GIVE MORE
POSITIVE RESPONSE BUT HAS BEEN CONSIDERABLY HANDICAPPED BY FAILURE
OF MICHELSON OR HIS REPRESENTATIVES TO APPROACH US SOONER WHEN
WE MIGHT HAVE BEEN IN POSITION TO BE MORE HELPFUL.
SULLIVAN

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